EXHIBIT 9
DATE 11/12/2011
HB 198

✗ ***Burden of Proof*** (See Chapter 4)

Burden of proof is a concept that determines which party has the duty to prove a disputed charge or assertion. The term is also used in connection with the level of proof required in a specific instance.

Within the framework of the exercise of eminent domain, the burden of proof shifts between the condemnor and condemnee as the process proceeds. Initially, as provided in section 70-30-111, MCA, the condemnor has the duty to show by a preponderance of the evidence that the public interest requires the proposed taking.

> **70-30-111. Facts necessary to be found before condemnation.** Before property can be taken, the plaintiff must show by a preponderance of the evidence that the public interest requires the taking based on the following findings:
>
> (1) that the use to which it is to be applied is a use authorized by law;
>
> (2) that the taking is necessary to such use;
>
> (3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;
>
> (4) that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected.

If the initial burden of proof under section 70-30-111, MCA, is met by the condemnor, then the burden shifts to the condemnee to show that the taking has been excessive or arbitrary. In Lincoln/Lewis & Clark County Sewer District v. Bossing, 215 Mont. 235, 696 P.2d 989 (1985), the trial court found that the sewer district had not shown necessity for the taking of defendants' properties because it failed to demonstrate a reasonable present need or even a need in the reasonably foreseeable future to connect defendants to the sewer system. The condemnor had not carried its burden, and the decision of the trial court was affirmed by the Montana Supreme Court.

When determining who has the burden of proof on the subject of just compensation, the Court, in State ex rel. Dept. of Highways v. Donnes, 219 Mont. 182, 711 P.2d 805 (1985), stated that the condemnee has the burden in eminent domain proceedings to prove entitlement to just compensation in excess of that offered by the condemnor.

✗ ***Clear and Convincing Evidence*** see Chapter 4, Burden of Proof Pertaining to the Exercise of Eminent Domain

Clear and convincing evidence is evidence indicating that the thing to be proved is highly probable or reasonably certain.

GUEST OPINION

Correct court ruling kicks MATL's appeal to state Legislature

By HERTHA L. LUND

Larry Salois recently won a case against MATL, a Canadian company that unsuccessfully tried to condemn Salois family property for a transmission line.

Salois had asked Montana Alberta Tie Ltd. to move its line to avoid damaging historical Native American tepee rings on his mother's private property. MATL refused and chose condemnation. Having lost, MATL now expects the Legislature to bail it out.

MATL claims it has a deal with Montana's legislators and the governor. As reported in the Lethbridge Herald, that deal will be done by March.

Arrogant? That's what I call it.

MATL's Canadian spokesperson says the Montana judge was wrong. I'm betting a Montana judge understands Montanans' constitutional property rights better than a Canadian public relations man.

The fact is that the United States and Montana constitutions protect property against taking for private purposes.

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Montana law provides, "[e]minent domain is the right of the state to take private property for public use." The Legislature may grant eminent domain authority in order to override an individual's private property rights, but only for a public use.

> "... our Legislature shouldn't hand these corporate interests a hammer with which to begin negotiations."

In Salois' case, the court found that the Legislature had not given MATL power to condemn private property. "Landowners seem to have rights in the U.S.," said a Canadian farmer, according to the Lethbridge Herald.

The fix that MATL's Canadian spokesperson wants is to gut these protections, letting MATL and other transmission developers run roughshod over farmers and ranchers. If the Legislature grants MATL the "patch" that MATL's spokesperson bragged about, Salois and other landowners could be damaged. Our elected officials must ensure that any "patch" is surgical and not a wholesale grant to developers to run over Montana landowners.

In MATL's view, a company does not have to reach a deal with the landowner according to willing buyer/willing seller terms. Instead, it uses condemnation to bully the landowner into a deal. "No deal, then we'll see you in court." This has also been NorthWestern Energy's approach on MSTI in western Montana.

We all benefit from public roads. Eminent domain, used properly, is needed. But the state builds roads for the public, not for private profits. Transmission lines built by public utilities also benefit the public.

But MATL, a line between Great Falls and Lethbridge, Alberta, will not provide electricity to Montana homes. The line would allow approximately 300 MW of energy to flow to and from Canada. MATL would collect a toll for that energy.

Did you know MATL relies on federal stimulus dollars, and the wind farms it would help to build are a heavy drain on the federal treasury? Free market? Certainly not free to federal taxpayers.

Come January, the corporate lobbyists and lawyers will tell our legislators that we need to develop our natural resources to create more jobs in Montana. They will tell us that all we need to do to help wind and transmission line developers is to get rid of those pesky environmental laws.

Streamlining permitting and environmental laws is not a bad idea. However, no industry should be allowed to negatively impact farmers and ranchers, who are essential to Montana's No. 1 industry.

Any "patch" needs to have landowners' interests as a top priority. The real issue is fairness. Montana landowners should not be compelled to provide their private property so MATL and other merchant lines can profit from out of state energy sales.

If MATL or MSTI can find willing sellers, then good luck to them. But our Legislature shouldn't hand these corporate interests a hammer with which to begin negotiations.

Salois and the 20 or more landowners who have refused to sell to MATL will now take their case to the Montana Legislature. The MSTI landowners share our interests. We are not against development of Montana's natural resources. Many landowners have leased their property for wind development. Fairness requires that our Canadian friends treat Montanans fairly. Condemning Montanans' land for private profits isn't the Montana way.

Hertha L. Lund practices law at Lund Law PLLC in Bozeman. She represents Salois and more than 20 landowners who are currently in negotiations with MATL.